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August 16, 2012 232783

Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

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PROFESSIONAL TRANSPORTATION, INC - ASSET ACQUISITION - CUSA ES, LLC, and
CUSA CS, LLC.

I am writing this letter in response to:

REPLY OF APPLICANT TO PROTEST OF WILLIAM W. SHARPE (232726)

I was struck by Counsel's claim of how diligent PTI is in maintaining records of driver compliance with the Department of Transportation.

Compliance. PTI diligently maintains records of driver compliance with the Department of Transportation.

I was wondering if PTI was as diligent at maintaining records of driver compliance with the Department of Transportation as was Midnight Sun Tours. Midnight Sun Tours was extremely diligent in maintaining records of driver compliance.

Midnight Sun Tours was so diligent at maintaining the drivers' records of duty status, that Midnight Sun Tours required drivers to change their original logs; Midnight Sun Tours then shredded the original logs; Midnight Sun Tours then presented the changed logs as the original logs. Now that is diligence.

Actually, Midnight Sun Tours went even further. Midnight Sun Tours was not content with the FMCSA hours of service regulation as they currently stood. Midnight Sun Tours went so far as to eliminate Provision 3 in Question 2 of the Guidance to FMCSR 295.2 as a necessary condition for logging off-duty during a tour of duty.

Question 2: What conditions must be met for a CMV driver to record meal and other routine stops made during a tour of duty as off-duty time?

Guidance:

- 1. The driver must have been relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, and any cargo or passengers it may be carrying.***
- 2. The duration of the driver's relief from duty must be a finite period of time which is of sufficient duration to ensure that the accumulated fatigue resulting from operating a CMV will be significantly reduced.***

3. *If the driver has been relieved from duty, as noted in (1) above, the duration of the relief from duty must have been made known to the driver prior to the driver's departure in written instructions from the employer. There are no record retention requirements for these instructions on board a vehicle or at a motor carrier's principal place of business.*

4. *During the stop, and for the duration of the stop, the driver must be at liberty to pursue activities of his/her own choosing and to leave the premises where the vehicle is situated.*

By eliminating Provision 3 in Question 2 of the Guidance to FMCSR 395.2 as a necessary condition for logging off-duty during a tour of duty, Midnight Sun Tours could require drivers to log off-duty during their tours of duty, even though the drivers were actually not off-duty during their tours of duty in accordance with the FMCSA hours of service regulations..

Eliminating Provision 3 in Question 2 of the Guidance to FMCSR 395.2 as a necessary condition for logging off-duty during a tour of duty gave Midnight Sun Tours a distinct competitive advantage. Midnight Sun Tours could claim that the drivers were not working, when in fact the drivers were working in accordance with the FMCSA hours of service regulations.

Drivers could work longer hours than the FMCSA hours of service regulations allowed them to; thus allowing the drivers to make more money. Midnight Sun Tours could run the buses longer than was actually allowed by the FMCSA hours of service regulations; thus allowing Midnight Sun Tours to make more money.

Everyone at Midnight Sun Tours was making more. The only problem were the bus drivers who kept bringing up Provision 3 in Question 2 of the Guidance to FMCSR 395.2 as a necessary condition for logging off-duty during a tour of duty; and how wrong it was for Midnight Sun Tours to require drivers to change their original logs, shred the original logs, and then present the changed logs as the original logs. However, that problem was easily solved by just firing the complaining drivers.

In its decision to grant Coach USA permanent control, the Surface Transportation Board missed the significance of Provision 3 in Question 2 of the Guidance to FMCSR 395.2 as a necessary condition for logging off-duty during a tour of duty. Provision 3 in Question 2 of the Guidance to FMCSR 395.2 affects the competitive environment, just as it affects the bus drivers of the bus companies involved in the transaction.

49 USC 14303

(b) Standard for Approval.— The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Board shall consider at least the following:

(1) The effect of the proposed transaction on the adequacy of transportation to the public.

It is essential that the Surface Transportation Board examine the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2 of all the bus companies involved in the transaction. If, as is the case at Midnight Sun Tours, the bus companies involved in the transaction do not comply with Provision 3 in Question 2 of the Guidance to FMCSR 395.2, then those bus companies are being given an unfair competitive advantage over bus companies that do

comply with Provision 3 in Question 2 of the Guidance to FMCSR 395.2.

49 USC 14303

(b) Standard for Approval.— The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Board shall consider at least the following:

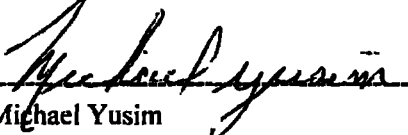
*(3) The interest of carrier employees affected by the proposed transaction.
The Board may impose conditions governing the transaction.*

If the bus companies involved in the transaction require their bus drivers to log off-duty during their tours without the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2, as is the case at Midnight Sun Tours, then those bus drivers are being forced to violate the FMCSA hours of service regulations.

Bus drivers who refuse to log off-duty during their tours of duty without the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2, risk being written up, suspended, and losing their jobs.

Unless the bus companies involved in the transaction can produce the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2, then those bus companies have not met the Standard for Approval specified in 49 USC 14303(b)(1) and 49 USC 14303(b)(3).

Sincerely,



Michael Yusim

cc:

Larry C. Tomlin
Krieg DeVault LLP
One Indiana Square, Suite 2800
Indianapolis, IN 46204



MIDNIGHT SUN TOURS

MIDNIGHT SUN TOURS

Interoffice Memorandum

From: Don Redden, Safety & Operations Manager

To: ALL MIDNIGHT SUN TOURS DRIVERS

**Re: STANDING AUTHORIZATION AND INSTRUCTION TO LOG OFF
DUTY FOR RELIEF**

Date: September 10, 2009

All Midnight Sun Tours Drivers are hereby authorized and instructed to log Off Duty when these conditions are met: (FMCSA § 395.2 and Interpretations)

1. You have been relieved of all duty and responsibility for the care and custody of the motor coach, its accessories, and any cargo or passengers that may have been on the motor coach.
2. The duration of your relief from duty is of a set time of sufficient duration to ensure that the fatigue of operating a motor coach is significantly reduced.
3. You are at liberty to pursue activities of your own choosing and may leave the premises where the motor coach is located.
4. You are hereby instructed to log Off Duty when these conditions are met.
5. You are also authorized and instructed to record meal and other routine stops made during your tour of duty as Off Duty time.

The purpose of this Authorization and Instruction is to preserve your available hours of service while keeping you rested in between portions of your driving assignments. You are required to log Off Duty when the above conditions are met.



Form 0801

**DRIVER'S DAILY LOG**

(24 HOURS)

Will be Scanned
Please Print Clearly Within the Boxes

Month Day Year Total Miles Driving Today

7 - 30 - 10 190

CARRIER
NAME &
ADDRESS

MIDNIGHT SUN TOURS, INC.

220 S. DIXIE HWY., STE. 2 - LAKE WORTH, FL 33460

Vehicle Number

50 YAD

Driver's ID / Code

520074

I certify these
entries are true
and correct

Driver's Signature in Full

James Joyner

Vehicle Number

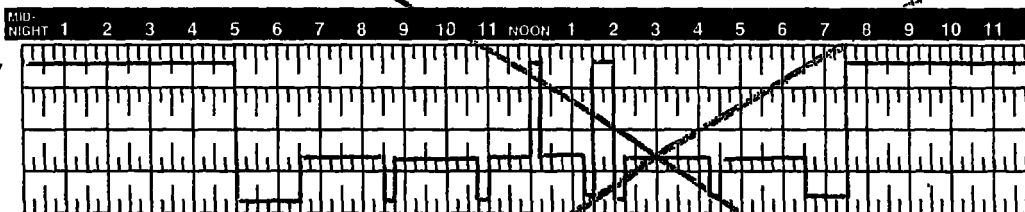
2611

Co-Driver's ID / Code

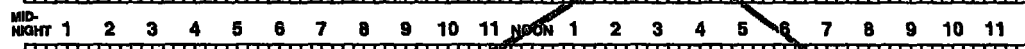
Co-Driver's Name

RECAP

- 1: OFF DUTY
2: SLEEPER
3: DRIVING
4: ON DUTY
(NOT DRIVING)



REMARKS:

TOTAL
HOURS

10.25

10.
3.75

24

1/4 = 25
1/2 = 50
3/4 = 7540.25
TOTAL HOURS
ON DUTY LAST
7 DAYS,
INCLUDING
TODAY29.25
TOTAL HOURS
AVAILABLE
TOMORROW:
70 HOURS
MINUS A52
TOTAL HOURS
ON DUTY LAST
8 DAYS,
INCLUDING
TODAYReturned to normal work
location at end of dayPre-Trip Inspection Signed
Post-Trip Inspection SignedCharter
Numbers

Belle Glades EXPRESS

of Days Off
Duty Includes
Today

Original File at home terminal

Duplicate Driver retains in his/her possession for eight days

USE TIME STANDARD AT HOME TERMINAL

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Form 0801
 Month: 09 Day: 30 Year: 10
 Total Miles Driven Today: 190
 Vehicle Number: 2611
 Driver's ID / Code: S20094
 Co-Driver's ID / Code: [blank]
 Driver's Signature: *[Signature]*
 Co-Driver's Name: [blank]

DRIVER'S DAILY LOG
 (24 HOURS)
 CARRIER: MIDNIGHT SUN TOURS, INC.
 NAME & ADDRESS: 220 S. DIXIE HWY., STE. 2 - LAKE WORTH, FL 33460
 Locality, State, and Postal Code: [blank]
 Date's Signature: *[Signature]*
 Co-Driver's Name: [blank]

Will be Scanned
 Please Print Clearly Within the Boxes
 RECAP
 TOTAL HOURS
 OFF DUTY LAST
 24 HOURS
 INCLUDING
 TODAY
 TOTAL HOURS
 AVAILABLE
 TONIGHT
 INCLUDING
 TODAY
 TOTAL HOURS
 ON DUTY LAST
 24 HOURS
 INCLUDING
 TODAY

TIME	1	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12
1: OFF DUTY																								
2: SLEEPER																								
3: DRIVING																								
4: ON DUTY (NOT DRIVING)																								
REMARKS:																								

TOTAL HOURS
 15.50
 8.50
 24

Driver's Signature: *[Signature]*
 Co-Driver's Name: [blank]
 Locality, State, and Postal Code: [blank]
 Date's Signature: *[Signature]*
 Co-Driver's Name: [blank]

TOTAL HOURS
 15.50
 8.50
 24

Will be Scanned
 Please Print Clearly Within the Boxes
 RECAP
 TOTAL HOURS
 OFF DUTY LAST
 24 HOURS
 INCLUDING
 TODAY
 TOTAL HOURS
 AVAILABLE
 TONIGHT
 INCLUDING
 TODAY
 TOTAL HOURS
 ON DUTY LAST
 24 HOURS
 INCLUDING
 TODAY